IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

MFA.No. 609 of 2000(A)

OA.64-66/1998 of FOREST TRIBUNAL, KOZHIKODE
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APPELLANTS:
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1. State of Kerala, represented by the Chief Secretary, Thiruvananthapuram.

2. Custodian of Vested Forest, Aranya Bhavan, Forest Complex, Olavakkode, Palakkad.

BY SPL GOVERNMENT PLEADER SRI. M.P.PRAKASH

RESPONDENTS:
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1. Ramankutty, S/o. Chami, Poolakkalparambu, Vevulliyapuram, Alathur (died)

2. Gopalan, S/o. Chami, do. do.

3. Subhadra, W/o. Haridasan, Kardipotta, Thonippadam, Vevulliyapuram, Alathur.

Addl. 4. Sri.Swaminathan, S/o. late Ramankutty, Pathanapuram, Thonipadam, Alathur Taluk, Palakkad.

Addl. 5. Rajendran, S/o. late Ramankutty, Chirakkode, Athipotta, Alathur.

Addl. 6. Sahadevan, S/o. late Ramankutty, Pazhakkal House, Vavulliyapuram, Alathur.

Addl. 7. Krishnankutty, S/o. late Ramankutty, chirakkode, Alathur, do.

Addl. 8. Sreedharan, S/o. late Ramankutty, Poolakkal Parambu, Vavulloiapuram, do.

Addl. 9. Lakshmanan, S/o late Ramankutty, do. do.

Addl. 10. Sathya Bhama, D/o. late Ramankutty, Mankara House, Choolannur, Alathur.

Addl. 11. Leelavathy, D/o. late Ramankutty, Ottarukadu, Peringottukurussi, Alathur.

Addl. 12. Valsala, D/o. late Ramankutty, Anjangadi, Vavulliapuram, Alathur.

Additional respondents, legal heirs of the deceased first respondent, are impleaded vide order dtd 30.7.2007 in IA 728/07

BY ADV. SRI.D.KRISHNA PRASAD FOR R1 TO R3
SRI.D.NARENDRANATH
SRI.M.HARISHARMA
SRI.T.P.ELDHOSE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & V. Giri, JJ.

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M.F.A.No.609 of 2000

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Dated this the 22nd day of August, 2007.

JUDGMENT

Giri,J.

Aggrieved by the common order in O.A.Nos.64 of 1998, 65 of 1998 and 66 of 1998 on the files of the Forest Tribunal, Kozhikode, State of Kerala and Custodian of Vested Forests have preferred this appeal under Section 8D of the Kerala Private Forests (Vesting & Assignment) Act, 1971 (hereinafter referred to as "the Act"). The Original Applications were preferred by the respondents herein under Section 8 of the Act inter alia seeking a declaration that the lands which are scheduled to the applications are not private forests. In the alternative it was prayed that the applicants should be held entitled to the benefits under Section 3 (2) or Section 3(3) of Act 26 of 1971. The Tribunal on an appreciation of the evidence adduced by both sides, came to the conclusion that the properties involved in the three cases are not private forests as defined in Section 2(f) of the Act and as such, it

is not vested in the Government. Obviously, in view of the finding that the properties are not vested forests, it was not necessary for the Tribunal to consider whether the applicants are entitled to exemption in terms of Section 3(2) and Section 3(3) of the Act.

2. The only question which falls for consideration in this appeal is whether the lands scheduled to the Original Applications are private forests within the meaning of Section 2(f) of the Act and whether the lands are vested in the Government in terms of Section 3(1) of the Act. As stated above, it is only when there is vesting in terms of Section 3(1) of the Act that it becomes necessary, in appropriate cases,to consider whether the owner of the private forest is entitled to the benefits under Section 3(2) and Section 3(3) of the Act, as the case may be.

3. Section 2(f) of the Act defines "private forest" as follows:

> "(f) "private forest" means-
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> (1) in relation to the Malabar district referred to in sub-section (2) of Section 5 of the State Reorganisation Act, 1956 (Central Act 37 of 1956)-
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> (i) any land to which the Madras

Preservation of Private Forests Act, 1949 (Madras Act XXVII of 1949), applied immediately before the appointed day excluding-

(A) lands which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964);

(B) lands which are used principally for the cultivation of tea, coffee,cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market."

Explanation:- Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds shall be deemed to be lands used for purposes ancillary to the cultivation of such crops;

© lands which are principally cultivated with cashew or other fruit bearing trees or are principally cultivated with any other agricultural crop and

(D) sites of buildings and lands appurtenant to and necessary for the convenient enjoyment or use of, such buildings;

(ii) any forest not owned by the Government, to which the Madras Preservation of Private Forests Act, 1949 did not apply, including

waste lands which are enclaves within wooded areas.

(2) in relation to the remaining areas in the State of Kerala, any forest not owned by the Government, including waste lands which are enclaves within wooded areas.

Explanation:- For the purposes of this clause, a land shall be deemed to be a waste land notwithstanding the existence thereon of scattered trees or shrubs;"

Thus in relation to the erstwhile Malabar district, any land to which the Madras Preservation of Private Forests Act (hereinafter referred to as "the MPPF Act") applied is liable to be treated as private forest. Of course, this excludes the lands which are mentioned in Sub-clauses (A) to (D) of Section 2(f)(1)(i) of the Act. Apart from the above, any forest, not owned by the Government to which MPPF Act did not apply, including waste lands which are enclaves within the wooded areas are also liable to be treated as private forest.

4. It is not the case of the appellants that the area in question is one to which the MPPF Act applied before the appointed day. In fact, as rightly noted by the Tribunal, to a specific question put to him in the cross examination, RW1, the

only witness examined on behalf of the State, mentioned that he does not have any knowledge or information as to whether the area in question comes within the purview of the MPPF Act. It is also relevant to point out that no contention to the effect that the land comes within the purview of the erstwhile MPPF Act was also taken up in the counter affidavit filed by the Divisional Forest Officer, before the Tribunal. Thus, the lands in question would not qualify as lands to which the MPPF Act applied immediately before the appointed day, i.e., 10.5.1971, so as to bring the same within the purview of Section 2(f)(1)(i) of the Act.

5. What remains to be considered is the application of Section 2(f)(2) of the Act, namely, in relation to lands which are otherwise forest lands, not owned by the Government and outside the purview of the MPPF Act. In deciding this question, the Tribunal had correctly gone through the characteristics of the lands as reported by the Advocate Commissioner, evidence adduced by the parties including the description of the lands in question in the registered document which had been brought into existence prior to the appointed day.

6. The land originally belonged to Poovally Mana.

Thereafter, kanam right was transferred to Pangu, S/o. Velu as per two document Nos. 44/1937 and 36/1937 of SRO, Alathur. Apparently, the kanam right was assigned by Pangu in favour of Parasurama Iyer as per Ext.A1 dated 24.2.1939. The same properties were also included in the schedule to the partition deed executed among Parasurama Iyer and others, Ext.A2 dated 6.1.1958. There was a subsequent assignment in favour of the petitioners and it is therefore that they held the properties prior to the notified date under the Act. They contended that prior to 1998, there was no dispute in relation to the property. Nor was there any notification issued declaring the area as vested forest. It was contended that the lands are not private forests. They are only dry lands devoid of any trees much less any forest trees.

7. The derivation of title as such, as claimed by the claimants is not seriously disputed in the counter affidavit. The respondents merely maintained that the properties are part of the vested forests called "Chemminikunnu Malavaram". Of course, respondents stated that they are not admitting the right, title and possession of the applicants over the properties in question. The veracity of the documents relied on by the

applicants and produced along with the applications as such was not disputed in the counter affidavit.

8. In the circumstances, actual lie of the lands and its nature are of crucial importance. In an interim report filed by the Advocate Commissioner, Ext.C1, along with Ext.C3 sketch, it was reported by the Advocate Commissioner after local inspection that the scheduled properties in the three Original Applications comprised of three adjacent portions bounded by Panchayat road on the south and the eastern sides and private properties on the west and northern sides. Remnants of a kayyala purported to have been shifted to give way to the Panchayat road at its inception was observed on the southern side along the near border of the Panchayat road. Jandas were observed along the eastern and part of the southern sides. All the three properties together lie on the northern, eastern and southern slopes of a small hillock. The nature of the properties reported by the Advocate Commissioner in the report dated 16.7.1998 is relevant, which is as follows:

"O.A.No.64/98 the petitioner, Ramankutty:

This property is bounded by private land belonging to

one Mr.Sivadas (stated by one of the petitioners to have been restored from the forest department) in the west, private paddy fields belonging to the petitioner in the North, Subadra's O.A. 66/98 property in the east and the Panchayat road on the southern side. On the far side of the Panchayat road in the south it is vested forest land for about 100 metres and beyond that again private land. The area is cultivable garden land with exposed hard laterite for a small portion towards the western boundary. Neither trees nor thick bushes were observed.

O.A.No.66/98 the petitioner, Subadra:

This property is bounded by the Panchayat road in the south, Ramankutty's O.A. 64/98 property in the west, private land belonging to Ramankutty & Gopalan (as claimed by the petitioner's side) in the north, Gopalan's O.A. 65/98 property in the east. The area is of cultivable soil of soft laterite variety. There were neither trees nor heavy bushes.

O.A. No.65/98 the petitioner, Gopalan:

This property is bounded by Panchayat road in the south with private property of one Mr. Kandan on the far side Subadra's O.A. 66/98 property in the west and north, and the Panchayat road & the Harijan Colony (on the far side) in the east. After the Harijan Colony in the east it is extensive paddy fields

using Malampuzha waters. The area is of cultivable soil with neither trees nor bushes."

9. What seems to be significant in the report in question is the total absence of any indications of forest lands either within the scheduled properties or in the immediate vicinity. The fact that there are Panchayat roads which bound the property on its two sides is also noteworthy. The property is found fit for cultivation. There are no indications of any felling of trees. There are no indications of wooded enclaves, as is contemplated by the provisions of the Act.

10. Oral evidence of RW1, who at the material time was the Forest Range Officer, Alathur, is also significant. As mentioned above, he was not able to give a positive answer as to whether the lands in question came under the purview of the MPPF Act. To a specific question put to him as to what was the characteristic noted by him in the lands in question indicating forest land, he has said that he noted rock formation in the land. He clarified the said statement later by saying that he could see rock formation only in half cent of land scheduled to O.A. No. 66 of 1998. He deposed that the remaining land is laterite soil. He

admitted that he could not find any wooded enclaves in the land in question, nor has he found any spontaneous growth of trees.

11. The applicants rightly placed reliance on the description of the land as contained in Exts.A1, A2, A3 and A5. Ext.A1 is dated 24.2.1939 and Ext.A3 kanam assignment deed dated 29.7.1970, the document of title as regards the applicant in O.A.No.65 of 1938 describes the land as paramba. So also, Ext.A4, the document in favour of the applicant in O.A.No.64 of 1998 describes the property as paramba. As rightly noted by the Tribunal, obviously there was no reason for the executants of Exts.A3 and A4 to misdescribe the properties, being conveyed under the document, which are executed prior to the appointed day under the Act. The description of the properties coupled with the evidence adduced as regards the nature and lie of the properties, in the year 1998, are sufficient to come to the conclusion that the properties are not private forests as defined under Section 2(f) of the Act.

12. In the light of the evidence on record, which we have discussed as detailed above, we are in agreement with the conclusion arrived at by the Forest Tribunal that the scheduled

lands are not private forests within the meaning of Section 2(f) of the Act. If that be so, they do not vest with the Government under Section 3(1) of the Act. The Tribunal had therefore rightly allowed the applications filed by the respondents. Consequently, we hold that the appeal is devoid of any merit and is therefore liable to be dismissed. Accordingly, the appeal is dismissed without any order as to costs.

J.B.Koshy,
Judge.

V.Giri,
Judge.

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